

A.G. Contract No.: KR05-0438TRN  
ECS File No.: JPA 05-039  
Project No.: TEA-WIL-0-401  
Section: Linear Park  
Project: Pedestrian Pathway  
TRACS No.: SL422 01C  
Budget Source Item No.:

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF WILLIAMS

THIS AGREEMENT is entered into this date September 12, 2005, pursuant to Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF WILLIAMS, acting by and through its MAYOR and CITY COUNCIL (the "City").

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. The interest of the State for this Project is in the acquisition of Federal funds for the use and benefit of the City and is authorized as the designated agent. Funds expended for the Project, are authorized by reason of Federal Law and Regulations.
4. The Project lies within the boundary of the City and has been selected by the City; the survey of the project has been completed and the plans, estimates and specifications will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.
5. The City, in order to obtain Federal funds for the construction of the project, is willing to provide city funds to match Federal funds in the ratio required or as finally fixed and determined by the City, State and FHWA, including actual construction engineering (CE) and administration costs.
6. The work embraced in this Agreement is for the design, construction and maintenance of a Multiuse Pathway and street furniture in Linear Park located between East Loop and Second Street, North of Route (RT) 66 and South of the BNSS Railroad tracks, hereinafter referred to as the "Project". The City will be responsible for the design, bidding, construction administration, and maintenance, of the Project.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

---

NO. 27714

Filed with the Secretary of State

Date Filed: 9-12-05

Janice K. Brewer  
Secretary of State

By: [Signature]

**Construction Tracs No.: SL422 01C**

Estimated Federal Aid Funds @ 94.3%	\$159,630.00
Estimated City Funds @ 5.7%	\$ 9,602.00
<b>Total Estimated Cost of Project</b>	<b>\$169,232.00</b>

\*(Includes construction, construction engineering administration and incidentals)

**II. SCOPE OF WORK****1. The State shall:**

a. Agree to be the City's authorized agent for the Project and submit a program containing the aforementioned Project to FHWA with the recommendation that it be approved for construction and funding. Should costs exceed the maximum Federal funds available, it is understood and agreed that the City will be responsible for any coverage.

b. Approve the Project if such project construction funds are available by FHWA for construction of the Project. The State and FHWA hereby designates the City to self-administer the Project.

c. Upon execution of this Agreement, make payments to the City for the direct actual cost of the construction of the Project, plus construction engineering, within thirty-days (30) after receipt and approval of an invoice.

d. Not be obligated to maintain said Project, should the City fail to budget or provide perpetual and proper maintenance as set forth in this Agreement.

**2. The City shall:**

a. With the aid and consent of the FHWA and the state using Arizona Procurement Procedures, proceed to advertise for, receive and open bids, subject to the concurrence of the FHWA and the State. Enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions, and Standard Specifications at the lowest bid price.

b. Provide personnel to administer and supervise construction. All construction Project change orders are to be copied to the State. The FHWA will participate in the construction administration cost provided by the City up to 94.3% percent of the construction cost. Construction administration costs not participated in by FHWA shall be borne by the City.

c. Consent to any inspections performed by the State, provide records or audit any books of the City in order for the State to assure itself that the monies on the Project have been spent and the Project completed in accordance with the plans and specifications, statutes, rules and regulations of the State and Federal Government.

d. Upon execution of this Agreement, invoice the State for the estimated 94.3% Federal Aid construction and construction administration costs addressed under this Agreement. The City is entirely responsible for all costs incurred in performing and accomplishing the work as set forth in this Agreement whether covered by Federal funding or not.

e. Upon completion of the Project, provide for at its own cost and as an annual item in its budget, perpetual and proper maintenance of the Project.

### **III. MISCELLANEOUS PROVISIONS**

1. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans and specifications, reports and the engineering in connection therewith, the construction of the improvements contemplated, cost over-runs and construction claims. The City will require its contractor(s) to name the State and ADOT as an additional insured in the contractor(s) insurance policies. The City will also require its contractors to name the State as an additional indemnitee in the City's contracts with its contractor(s). It is understood and agreed that the State's participation is confined solely to securing Federal Aid; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be solely the liability of the City and that, to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance or negligent performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees, shall include the event of any action, court costs, expenses or litigation or attorneys' fees.

2. The cost of the construction and the construction engineering work covered by this Agreement is to be borne by FHWA and the City, each in the proportion described or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal Aid received.

3. This Agreement shall remain in full force and effect until completion of the work; provided, however, that any provisions in this Agreement for electrical power and maintenance shall be perpetual, unless assumed by another governmental City.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 121-1-12213) and all applicable Federal regulations under the Act including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue – Mail Drop 616E  
Phoenix, AZ 85007  
(602) 712-7525

City of Williams  
Attn: Dennis Wells, City Manager  
113 S. First Street  
Williams, AZ 86046  
(928) 635-4451

11. Pursuant to Arizona Revised Statutes § 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

---

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**CITY OF WILLIAMS**

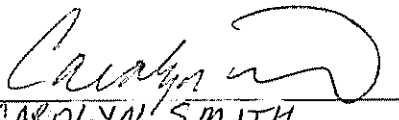
**STATE OF ARIZONA**

Department of Transportation

By   
KENNETH EDES  
Mayor

By   
SUSAN TELLEZ  
Contract Administrator

ATTEST:

By   
CAROLYN SMITH  
City Clerk

JPA 05-039

APPROVAL OF THE CITY OF WILLIAMS

I have reviewed the above referenced intergovernmental Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF WILLIAMS, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 17<sup>TH</sup> day of AUGUST, 2005.

  
\_\_\_\_\_  
City Attorney

RESOLUTION NO. 1180

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF  
WILLIAMS, ARIZONA AUTHORIZING THE CITY TO ENTER INTO  
AND SIGN AN INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE CITY OF WILLIAMS AND THE STATE OF ARIZONA FOR  
FEDERAL GRANTS FOR THE LINEAR PARK PROJECT**

**WHEREAS**, the City of Williams and the State of Arizona are interested in receiving federal funds for the use and benefit of the City for the design, construction and maintenance of a multi-use pathway and street furniture in Linear Park within the City of Williams;

**WHEREAS**, the City Council and the Staff of the City have reviewed the Intergovernmental Agreement ("Agreement") between the State of Arizona, Department of Transportation ("State") and the City and find that the purposes and uses of federal funds are beneficial to the City;

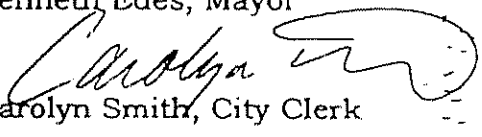
**WHEREAS**, the City is willing to provide funds to match federal funds in a ratio required or as finally fixed and determined by the City, State and the Federal Highway Administration;

**WHEREAS**, one of the provisions of the Agreement requires that the City pass a Resolution to enter into this Agreement and authorizes the execution thereof.

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and the Council of the City of Williams, Arizona, hereby approve the Agreement between the City and the State for Federal grants for the Linear Park Project.

**PASSED, APPROVED AND ADOPTED** this 25<sup>th</sup> day of August, 2005 by a vote of 5 in favor, 0 opposed.

Kenneth Edes, Mayor

  
Carolyn Smith, City Clerk

Approved as to Form:

  
Lat J. Celmins, City Attorney

N:\WP50\City of Williams\Resolutions\Linear Park Resolution.wpd



STATE OF ARIZONA  
OFFICE OF THE ATTORNEY GENERAL  
CIVIL DIVISION  
TRANSPORTATION SECTION

Susan E. Davis  
Assistant Attorney General

Direct: 602-542-8855  
Fax: 602-542-3646

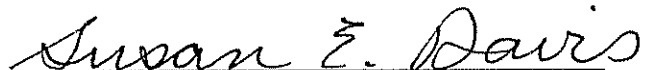
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR05-0438TRN (JPA 05-039), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED Sept. 1, 2005.

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:dgr  
Attachment  
922420